

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

B THERAPY LLC,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	JURY TRIAL DEMANDED
HOLOGIC, INC., SENORX, INC.,)	
C.R. BARD, INC., EASTERN REGIONAL)	
MEDICAL CENTER, INC. and CANCER)	
TREATMENT CENTERS OF AMERICA)	
PROFESSIONAL CORPORATION OF)	
PENNSYLVANIA, P.C.,)	
)	
Defendants.)	
_____)	

COMPLAINT

For its Complaint, Plaintiff B Therapy, LLC ("B Therapy"), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. B Therapy is a Delaware limited liability company with a place of business located at 1619 Nashville Avenue, New Orleans, Louisiana 70115.
2. Defendant Hologic, Inc. is a Delaware corporation with, upon information and belief, a place of business located at 35 Crosby Drive, Bedford, Massachusetts 01730.
3. Defendant SenoRx, Inc. is a Delaware corporation with, upon information and belief, a place of business located at 1625 West 3rd Street, Tempe, Arizona 85281.
4. Defendant C.R. Bard, Inc. is a New Jersey corporation, with upon informant and belief, a place of business located at 730 Central Avenue, Murray Hill, New Jersey 07974.

5. Upon information and belief, SenoRx, Inc. is a wholly-owned subsidiary of C.R. Bard, Inc.

6. Upon information and belief, Hologic, Inc. acquired assets of SenoRx that infringe B Therapy's patent.

7. Defendant Eastern Regional Medical Center, Inc. is a Pennsylvania corporation with, upon information and belief, a place of business located at 1331 East Wyoming Avenue, Philadelphia, Pennsylvania 19124.

8. Defendant Cancer Treatment Centers of America Professional Corporation of Pennsylvania, P.C. is a Pennsylvania corporation with, upon information and belief, a place of business located at 1331 East Wyoming Avenue, Philadelphia, Pennsylvania 19124.

9. Upon information and belief, Eastern Regional Medical Center, Inc. and Cancer Treatment Centers of America Professional Corporation of Pennsylvania, P.C. are affiliates.

JURISDICTION AND VENUE

10. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*

11. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.

12. Upon information and belief, Defendants conduct substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this district.

13. Venue is proper in this district pursuant to §§ 1391(b), (c) and 1400(b).

THE PATENT-IN-SUIT

14. On February 24, 1998, United States Patent No. 5,720,717 (the "'717 patent"), entitled "Intracavitary Catheter For Use In Therapeutic Radiation Procedures," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '717 patent is attached hereto as Exhibit A.

15. The inventor of the '717 patent is a radiation oncologist and an active inventor. He has pioneered the development of intracavitary catheters for use in therapeutic radiation procedures. Indeed, the '717 patent has been referenced by over 120 patents or applications.

16. B Therapy is the assignee and owner of the right, title and interest in and to the '717 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,720,717

17. B Therapy repeats and realleges the allegations of paragraphs 1 through 16 as if fully set forth herein.

18. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendants are liable for infringement of the '717 patent by making, using, importing, offering for sale, and/or selling therapeutic catheters, including, but not limited to Contura and MammoSite multi-lumen balloon catheters, covered by one or more claims of the '717 patent.

19. More specifically and upon information and belief, the Contura multi-lumen balloon catheter includes a therapeutic catheter apparatus which permits insertion of a radiotherapeutic member through an orifice and into a body cavity. The catheter body is not subject to deformation due to pressure in the orifice. The catheter includes an

inflatable balloon member capable of expansive engagement with the body cavity when expanded. *See* Instructions for Use – Contura (available at [http://www.hologic.com/sites/default/files/package%20inserts/Contura%20Multi-](http://www.hologic.com/sites/default/files/package%20inserts/Contura%20Multi-Lumen%20Balloon%20IFU%20%28MAN-)

[03626%29%20English%20Rev%200001%2010_2014.pdf](http://www.hologic.com/sites/default/files/package%20inserts/Contura%20Multi-Lumen%20Balloon%20IFU%20%28MAN-03626%29%20English%20Rev%200001%2010_2014.pdf) (last accessed Jan. 26, 2015));

Patient Brochure (available at http://hologic.com/sites/default/files/white-papers/PP-00192_Brachytherapy_Patient_Brochure_LowRes.pdf (last accessed Jan. 26, 2015)).

The catheter includes radiotherapeutic rod receiving members (e.g. treatment lumens) that are operable to receive radiotherapeutic rods. The rods are positioned within the rod receiving members and have a radioactivity level that is prescribed by a physician for treatment of the cancerous tissue. *See* Patient education video (available at

<https://www.youtube.com/watch?v=jKnOCmgL0mY> (last accessed Jan. 26, 2015)). The

catheter provides manipulation of the body cavity (e.g. lumpectomy cavity) by expansive

engagement between the balloon and the body cavity upon inflation of the balloon. "Two

to three weeks following the lumpectomy procedure, the Contura balloon is placed inside

the breast. Once inside the lumpectomy cavity, the balloon is inflated with saline solution

until it fits snugly within the cavity and will remain inflated inside the patient's breast

during the five day treatment." *See id.*; Patient Brochure (available at

<http://hologic.com/sites/default/files/white-papers/PP->

[00192_Brachytherapy_Patient_Brochure_LowRes.pdf](http://hologic.com/sites/default/files/white-papers/PP-00192_Brachytherapy_Patient_Brochure_LowRes.pdf) (last accessed Jan. 26, 2015)).

The Contura multi-lumen balloon catheter includes an inflation tube (e.g. inflation

lumen) which permits inflation and deflation of said therapeutic balloon. *See* Instructions

for Use – Contura (available at

<http://www.hologic.com/sites/default/files/package%20inserts/Contura%20Multi->

Lumen%20Balloon%20IFU%20%28MAN-

03626%29%20English%20Rev%20001%2010_2014.pdf (last accessed Jan. 26, 2015)).

20. And upon information and belief, the MammoSite multi-lumen balloon catheter includes a therapeutic catheter apparatus which permits insertion of a radiotherapeutic member through an orifice and into a body cavity. The catheter body is rigid and is not subject to deformation due to pressure in the orifice. The catheter includes an inflatable balloon member capable of expansive engagement with the body cavity when expanded. *See* Patient Brochure (available at [http://hologic.com/sites/default/files/white-papers/PP-](http://hologic.com/sites/default/files/white-papers/PP-00192_Brachytherapy_Patient_Brochure_LowRes.pdf)

00192_Brachytherapy_Patient_Brochure_LowRes.pdf (last accessed Jan. 26, 2015)).

The catheter includes radiotherapeutic rod receiving members (e.g. treatment lumens) that are operable to receive radiotherapeutic rods. The rods are positioned within the rod receiving members and have a radioactivity level that is prescribed by a physician for treatment of the cancerous tissue. *See* MammoSite Animation Video (available at [http://www.hologic.com/videos/intervention-and-treatment/breast-](http://www.hologic.com/videos/intervention-and-treatment/breast-brachytherapy/mammosite-animation-video)

brachytherapy/mammosite-animation-video (last accessed Jan. 26, 2015). The catheter provides manipulation of the body cavity (e.g. lumpectomy cavity) by expansive engagement between the balloon and the body cavity upon inflation of the balloon.

Following the lumpectomy procedure, the MammoSite balloon is placed inside the breast. Once inside the lumpectomy cavity, the balloon is inflated until it fits snugly within the cavity and will remain inflated inside the patient's breast during the five day treatment period. *See id.*; Patient Brochure (available at [http://hologic.com/sites/default/files/white-papers/PP-](http://hologic.com/sites/default/files/white-papers/PP-00192_Brachytherapy_Patient_Brochure_LowRes.pdf)

00192_Brachytherapy_Patient_Brochure_LowRes.pdf (last accessed Jan. 26, 2015)).

The MammoSite multi-lumen balloon catheter includes an inflation tube (e.g. inflation lumen) which permits inflation and deflation of said therapeutic balloon. *See* MammoSite Animation Video (available at <http://www.hologic.com/videos/intervention-and-treatment/breast-brachytherapy/mammosite-animation-video> (last accessed Jan. 26, 2015)).

21. Questions of fact common to all Defendants will arise in the action, including questions of fact relating to the infringement of the '717 patent.

22. B Therapy is entitled to recover from Defendants the damages sustained by B Therapy as a result of Defendants' infringement of the '717 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

B Therapy hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, B Therapy requests that this Court enter judgment against Defendants as follows:

- A. An adjudication that Defendants have infringed the '717 patent;
- B. An award of damages to be paid by Defendants adequate to compensate B Therapy for Defendants' infringement of the '717 patent and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of B Therapy's reasonable attorneys' fees; and

D. An award to B Therapy of such further relief at law or in equity as the Court deems just and proper.

Dated: January 26, 2015

STAMOULIS & WEINBLATT LLC

/s/ Richard C. Weinblatt

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